

**AGREEMENT
BETWEEN
BOARD OF PUBLIC WORKS AND SAFETY
WEST LAFAYETTE, INDIANA
AND
WESSLER ENGINEERING
FOR
ON-CALL WASTEWATER ENGINEERING SERVICES**

THIS AGREEMENT, entered into by and between the Board of Public Works and Safety, City of West Lafayette, Indiana (hereinafter named OWNER) and M. D. Wessler & Associates, Inc. (d/b/a Wessler Engineering) (hereinafter named ENGINEER):

WITNESSETH THAT:

WHEREAS, the OWNER has need for On-Call Engineering Services to address issues with the City's wastewater collection and treatment system; and

WHEREAS, the ENGINEER proposes to provide Professional Services to the OWNER to address issues with the wastewater system, herein described as the PROJECT; and

WHEREAS, the Project shall consist of individual Task Orders initiated at the request of the OWNER; and

WHEREAS, the ENGINEER has expressed a willingness to provide the Professional Services and agrees to furnish these services as described in this Agreement for the above-described PROJECT.

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties hereto mutually covenant and agree as follows:

**ARTICLE I
SCOPE OF PROFESSIONAL SERVICES – BASIC SERVICES**

A. BASIC SERVICES

1. All Professional Services shall be executed by a separate Task Order which, upon execution, will become part of this Agreement. Each Task Order shall define the scope of work, include the proposed fee and type of fee, and anticipated schedule for completing the work defined by the Task Order.

**ARTICLE II
OWNER'S RESPONSIBILITIES**

The OWNER's responsibilities are contained in Attachment No. 1, Standard Terms and Conditions.

**ARTICLE III
COMPENSATION**

In accordance with the terms and conditions of the Agreement, the ENGINEER shall provide the professional services for which the OWNER shall compensate the ENGINEER as follows:

- A. Compensation for Basic Services to be provided as described in Article I shall be on the basis of either (1) a Lump Sum Fee (including Reimbursable Expenses) or (2) the ENGINEER's current Hourly Rate and Reimbursable Expense Schedule, as defined in each individual Task Order.

Under Item (2), Compensation shall be on the basis of the of the actual man-hours and expenses incurred in performing the Services, at the ENGINEER'S hourly rate and reimbursable expense schedule in effect at the time the Services are performed (the 2010 Hourly Rate and Reimbursable Schedule is included as Attachment No. 2), plus reimbursement for actual out-of-pocket costs incurred in conjunction with providing the Professional Services described herein.

**ARTICLE IV
SCHEDULE**

The Schedule for completing the Work shall be as defined in each individual Task Order.

**ARTICLE V
STANDARD TERMS AND CONDITIONS**

The Standard Terms and Conditions of this Agreement are included as Attachment No. 1

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement. A telecopied or facsimile signature shall be equivalent to and as binding as an original signature.

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement, this _____ day of _____, 2010.

ENGINEER

OWNER

**M.D. WESSLER & ASSOCIATES, INC.
d/b/a WESSLER ENGINEERING**

**BOARD OF PUBLIC WORKS & SAFETY
CITY OF WEST LAFAYETTE, INDIANA**

Martin A. Wessler, P.E.
CEO

John R. Dennis, Mayor

Attest: _____
Gary L. Ruston, P.E.
Senior Project Manager

Sana G. Booker, Member

Date: _____, 2010

Bradley W. Marley, Member

Jonathan C. Speaker, Member

Elizabeth M. Stull, Member

Attest: _____
Judith C. Rhodes IAMC/CMC/CPFA
Clerk-Treasurer

ADDRESS FOR GIVING NOTICE:

Wessler Engineering
6219 S. East Street
Indianapolis, IN 46227

ADDRESS FOR GIVING NOTICE:

City of West Lafayette
609 West Navajo Street
West Lafayette, Indiana 47906

GLR/Y:/Proposals Qualification & Agreements/Agreements/2010/P2061 W Laf General WW Services

Attachments: No. 1 – Standard Terms and Conditions
No. 2 – 2010 Hourly Rate and Reimbursement Expense Schedule

ATTACHMENT NO. 1

STANDARD TERMS AND CONDITIONS

1. Basic Agreement

A. Engineer shall provide, or cause to be provided, the Basic Services as described in this Agreement, and Owner shall pay Engineer for such Services.

2. Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish Additional Services in addition to those set forth above.

B. Owner shall pay Engineer for such Additional Services on the basis of the Engineer's current Standard Hourly Rate and Reimbursable Expense Schedule.

3. Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. Unpaid invoices more than thirty days past due shall bear interest rate of 8% per annum, unless the claim is a disputed claim.

4. Design without Construction Phase Services

A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer directly resulting therefrom.

5. Termination

A. This Agreement may be terminated by either party by thirty days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to

Owner, and Owner shall pay Engineer for all the Services performed plus termination or suspension expenses. Upon restart of suspended Services, an equitable adjustment shall be made to Engineer's compensation and the Project schedule.

6. Owner's Responsibilities

A. Provide Engineer with reasonable criteria and information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and specify any design and construction standards that Owner requires be included in the Drawings and Specifications.

B. Designate in writing a person authorized to act as the Owner's representative. The Owner or his representative shall receive and examine documents submitted by the Engineer, interpret and define the Owner's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the Engineer's services.

C. Furnish to the Engineer all available existing information for service and utilities locations, easements, right-of-way, encroachments, and zoning and deed restrictions, except as provided otherwise in the description of services.

D. Provide for full and free access for the Engineer to enter upon all property required for the performance of the Engineer's services under this Agreement.

E. Provide legal, accounting and insurance counseling services as necessary for the Project.

F. Pay for placement and payment for advertisement for Bids in appropriate publications, and all permit fees for agency approval of the Project.

G. Furnish above services at the Owner's expense and in such manner that the Engineer may rely upon them in the performance of his services under this Agreement.

H. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the Project or other event, which may substantially affect the Engineer's performance of services under this Agreement.

7. Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Mediation or exercising their rights under law.

B. If Mediation is invoked, the Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed upon party. If such mediation is unsuccessful in resolving the Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

8. Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 8.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

9. General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers, to the extent reasonable and customary.

B. This Agreement is to be governed by the laws of the State of Indiana.

C. All design documents prepared or furnished by Engineer are instruments of service, and are the Property of the Owner. The Owner shall have the right to use, reuse or modify the instruments of service at the Owner's discretion. The Engineer shall retain an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

D. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and

hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

E. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the OWNER with respect to this Agreement or to the Project.

F. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or by the other's employees and agents.

G. The Engineer agrees to maintain records of payroll costs, including fringe benefit costs, and actual out-of-pocket costs on a generally recognized accounting basis and shall be available to the Owner during the life of this Agreement at mutually convenient times.

H. In the event any provisions of this Agreement shall be held to be invalid and non-enforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

I. In the event litigation is commenced to enforce any term or condition of this agreement the prevailing party in such litigation shall be entitled to costs of litigation including a reasonable attorney fee.

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ATTACHMENT NO. 2
2010 HOURLY RATE and REIMBURSABLE EXPENSE SCHEDULE

<u>Position</u>	<u>Hourly Rate</u>
Principal Engineer	\$165.00
Senior Project Manager	\$145.00
Project Manager/Project Engineer III	\$120.00
Survey Manager	\$120.00
Assistant Project Manager/Project Engineer II	\$105.00
Construction Services Manager	\$95.00
Project Engineer I	\$95.00
Field Services Manager	\$85.00
Designer	\$90.00
Engineer	\$85.00
Operations Specialist	\$80.00
Assistant Environmental Manager	\$85.00
Environmental Scientist	\$70.00
Technician IV/Senior Resident Project Representative	\$80.00
Technician III/Resident Project Representative III	\$75.00
Technician II/Resident Project Representative II	\$65.00
Technician I/Resident Project Representative I	\$55.00
Survey Crew Manager	\$75.00
Survey Crew Chief	\$65.00
Project Secretary	\$55.00

Reimbursable Expenses shall be charged as follows.

<u>Item and Unit</u>	<u>Unit Cost</u>
Mileage (per mile)	At current IRS published rate at time of expense
Black & white copy (each)	8.5"x11" or 11"x17" \$0.10
	24"x36" \$0.75
Color copy (each)	8.5"x11" \$0.20
	11"x17" \$0.40
	24"x36" \$1.00
Mylar reproducible plot/copy (each 24"x36")	\$5.50
GPS Survey Equipment/Robotic Total Station	\$15.00 per hour
Postage/shipping/freight, Long distance telephone and fax, Lodging and Per Diems	At Cost
Subcontractor/Subconsultant fees	Cost + 10%

This schedule is subject to change

December 15, 2009